

§ 904.12

Firm Energy rate, the Contractor will be billed for the difference between the amount that Western would have received at the then existing Firm Energy rate, including the appropriate Lower Basin Development Fund Contribution Charge, and the amount actually received.

§ 904.12 Payments to contractors.

(a) Funds advanced to the Secretary of the Interior for the Upgrading Program and costs reasonably incurred by the Contractor in advancing such funds, as approved by Western, shall be returned to the Contractor advancing the funds during the Contract period through credits on that Contractor's power bills. Appropriate credits will be developed and applied pursuant to terms and conditions agreed to by contract or agreement.

(b) All other obligations of the United States to return funds to a Contractor shall be repaid to such Contractor through credits on power bills, with or without interest, pursuant to terms and conditions agreed to by contract or agreement.

§ 904.13 Disputes.

(a) All actions by the Secretary of Energy, acting by and through the Administrator of Western, shall be binding unless or until reversed or modified in accordance with provisions contained herein.

(b) Any disputes or disagreements as to interpretation or performance of the provisions of these General Regulations under the responsibility of Western shall first be presented to and decided by the Administrator. The Administrator shall be deemed to have denied the Contractor's contention or claim if it is not acted upon within ninety (90) days of its having been presented.

(c) The decision of the Administrator shall be final unless, within thirty (30) days from the date of such decision, a written request for arbitration is received by the Administrator. The Administrator shall have ninety (90) days from the date of receipt of a request for arbitration either to concur in or deny in writing the request for such arbitration. Failure by the Administrator to take any action within the ninety (90)

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day period shall be deemed a denial of the request for arbitration. In the event of a denial of a request for arbitration, the decision of the Administrator shall become final. Upon a decision becoming final, the disputing Contractor's remedy lies with the appropriate Federal court. Any claim that a final decision of the Administrator violates any right accorded the Contractor under the Project Act, the Adjustment Act, or Title I of the Hoover Power Plant Act is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one (1) year after final refusal by the Administrator to correct the action complained of, in accordance with section 105(h) of the Hoover Power Plant Act.

(d) When a timely request for arbitration is received by the Administrator and the Administrator concurs in writing, the disputing Contractor and the Administrator shall, within thirty (30) days after receipt of notice of such concurrence, each name one arbitrator to the panel of arbitrators which will decide the dispute. All arbitrators shall be skilled and experienced in the field pertaining to the dispute. In the event there is more than one disputing Contractor, the disputing Contractors shall collectively name one arbitrator to the panel of arbitrators. In the event of their failure collectively to name such an arbitrator within fifteen (15) days after their first meeting, that arbitrator shall be named as provided in the Commercial Arbitration Rules of the American Arbitration Association. The two arbitrators thus selected shall name a third arbitrator within thirty (30) days of their first meeting. In the event of their failure to so name such third arbitrator, that arbitrator shall be named as provided in the Commercial Arbitration Rules of the American Arbitration Association. The third arbitrator shall act as chairperson of the panel. The arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be limited to the issue submitted. The panel of arbitrators shall not rewrite, change, or amend these General Regulations or the Contracts of any of the